



**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No. FAA-2015-3304; Notice No. 15-07]**

**RIN 2120-AK66**

**Temporary Flight Restrictions in the Proximity of Launch and Reentry Operations;  
Withdrawal**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); withdrawal.

**SUMMARY:** The FAA is withdrawing a previously published NPRM that proposed to revise the temporary flight restriction (TFR) provision for space flight operations to make the restrictions applicable to all aircraft including non-U.S. registered aircraft, instead of only U.S. registered aircraft or aircraft flown by pilots using a FAA pilot certificate. The NPRM also proposed to amend language for consistency with other TFR provisions and commercial space regulations and definitions by replacing “space flight operations” with “launch, reentry, or amateur rocket operations.” The intended effect of the proposed action was to further enhance the safety in the affected airspace and improve the readability of the TFR requirements. After further review of this action and the changing technology and scope of new flight operations, the FAA determined that a better assessment of TFRs in the National Air Space (NAS) is needed to address present day operations; therefore, it is withdrawing this NPRM.

**DATES:** The FAA is withdrawing the NPRM published on September 2, 2015 (80 FR 53033) as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Patrick Moorman, Airspace Regulations Team, AJV-113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8745; e-mail [patrick.moorman@faa.gov](mailto:patrick.moorman@faa.gov).

## **SUPPLEMENTARY INFORMATION**

### **I. Overview of Notice 15-07 (NPRM)**

Section 91.143 of Title 14 of the Code of Federal Regulations (CFR) authorizes the FAA to issue a Notice to Airmen (NOTAM) prohibiting a person from operating any aircraft of U.S. registry or piloting an aircraft under the authority of an airman certificate issued by the FAA in areas designated in the NOTAM for space flight operations. By restricting non-essential aircraft from the designated recovery area, the FAA ensures the safe recovery of spacecraft while mitigating the risk of an aircraft collision.

On September 2, 2015, the FAA published an NPRM, Notice No. 15-07, proposing to amend § 91.143 [80 FR 53033] to ensure that all aircraft—not only U.S. registered aircraft or aircraft flown by pilots using an FAA pilot certificate—are restricted from operating in airspace designated for launch, reentry, or amateur rocket operations. The FAA also proposed amending the provision to update and clarify that the FAA issues NOTAMs that designate a TFR under § 91.143 for launch, reentry, or Class 2 or 3 amateur rocket operations, when the FAA determines a TFR is necessary to maintain safety because

technological changes have resulted in an increased growth of larger amateur rockets with greater power. The NPRM would also amend the language of § 91.143 to align with the terminology used in 51 U.S.C. Chapter 509 and the FAA space transportation regulations and definitions by replacing “space flight operations” with “launch, reentry, or amateur rocket operations.” The FAA intended to strengthen the understandability of these requirements and enhance safety in the affected airspace.

## **II. Discussion of Comments Received on the NPRM**

The 60-day comment period closed on November 2, 2015. The FAA received two comments from individuals regarding: (1) the use of ambiguous language in the proposed regulation that does not address the uniqueness of unmanned aircraft operations and (2) a recommendation to limit the length of a TFR to a narrow window of time.

One commenter suggested that the FAA limit the length of the TFR to a narrow window of time not to exceed 24 hours and recommended that a 48-hour notice be provided via NOTAM. The individual commented that any TFR longer than 24 hours is not temporary and should be established as a restricted area by rulemaking under the Administrative Procedures Act. This comment is outside the scope of this rulemaking because time limits were not proposed in the NPRM and are not addressed in the existing rule. The FAA notes, however, that TFRs issued under § 91.143 are established within the airspace and over a period of time necessary to contain the activity and ensure the safety of the NAS.

Another commenter suggested that the use of the proposed language: “No person may operate an aircraft within an area...” presents an undesirable level of ambiguity when considering unmanned aircraft and drones—particularly autonomously guided or

preprogrammed aircraft that follow GPS coordinates or are otherwise not under the direct control of a person.

The FAA defines the term “operate” broadly. Under the definition in § 1.1, “operate with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).” Therefore, the term “operate” captures persons who operate the aircraft directly and those who cause an aircraft to be operated, whether manned or unmanned. Additionally, “within” as used in the phrase “within an area designated for launch, reentry, or amateur rocket operations” refers to the location of the aircraft, not the location of the operator.

### **III. Reason for Withdrawal**

The FAA has decided to withdraw this rulemaking because it has determined that this regulatory course of action requires further study of the changing environment of flight operations, including new technologies and new types of commercially viable operations. The proposed rule references launch, reentry, and amateur rocket operations, replacing the reference to “space operations,” which encompasses both launch and reentry; however, narrowing TFRs to launch, reentry, and amateur rockets operations without understanding the complete scope of all space operations could unknowingly narrow the applicability of TFRs. A greater understanding of current flight operations will serve to enhance the effectiveness of the TFRs. From an efficiency standpoint, the FAA strives to integrate all operations in the NAS, and because TFRs are necessary to provide the highest level of safety, the FAA is withdrawing this NPRM to better assess the scope of TFR regulations in

the NAS. The FAA will continue to include launches, reentries, and amateur rocket operations under “space operations” in § 91.143.

#### **IV. Conclusion**

The FAA has determined that this regulatory course of action requires further study and that withdrawal of this NPRM is necessary. Withdrawal of Notice No. 15-07 does not preclude the FAA from issuing another notice on the subject matter in the future or commit the agency to any future course of action. The Agency will make any future necessary changes to the Code of Federal Regulations through an NPRM with opportunity for public comment.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, Regulatory Planning and Review, are subject to these requirements.

The FAA has evaluated this withdrawal based on the requirements of Executive Order 13771. Because the FAA determined that the NPRM was not a significant regulatory action under Executive Order 12866, the withdrawal of the NPRM does not constitute an Executive Order 13771 deregulatory action. In addition, the FAA also finds that there are no quantifiable costs or benefits associated with this withdrawal, and may therefore publish this

action without identifying two offsetting deregulatory actions. The FAA, therefore, is withdrawing Notice No. 15-07, published in 80 FR 53033 on September 2, 2015.

Issued under authority provided by 49 U.S.C. 106(f) and § 40103(b) in Washington, DC, on July 21, 2017.

Gary A. Norek  
Acting Director, Airspace Services  
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